IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No.1221 of 2002
Date of Decision:30.10.2007

Banu Ram and others

.....Appellants

Vs.

Banwari Lal and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. S.C.Nagpal, Advocate for the appellants.

Mr. B.R.Gupta, Advocate for the respondents.

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Rajesh Bindal, J.

The plaintiffs are in second appeal before this Court against concurrent finding of fact by both the Courts below whereby suit filed by them for permanent injunction was dismissed.

The grouse raised by the appellants in the present case is only to the extent that while dismissing the suit filed by the appellants/ plaintiffs for permanent injunction, findings have been recorded on the validity of the sale deed in favour of the appellants which was not one of the issues framed by the Courts below for decision in the present case.

Having heard learned counsel for the parties, the appeal is entertained for consideration of the following substantial question of law:-

> "Whether the learned Courts below could record findings on a fact which is not related to any of the issues framed for consideration in the suit?"

For the determination of the above referred question of law as the counsel for both the parties agreed, the appeal itself is taken up and heard for final disposal.

Briefly the facts, as noticed by the Courts below, are that the appellants/ plaintiffs claimed that they had purchased the land in dispute vide sale deed dated 20.11.1991 which was registered on 28.11.1991 and

accordingly had become owner thereof. The possession of the land was also delivered to them. The cause of action to file the suit arose for the reason that the respondents/ defendants started interfering in their peaceful possession. The suit was contested by the respondents/ defendants raising various pleas including that sale deed sought to be projected by the appellants is a forged and bogus document. On the pleadings of the parties, following issues were framed in the suit:-

"1. Whether the plaintiffs are in possession of the suit land, if so, to what effect? OPP

2. Whether the suit is not maintainable in the present form? OPD

3. Whether the plaintiffs have no locus-standi to file and maintain the present suit? OPD

4. Whether the plaintiffs have no causes of action to file the suit? OPD

5. Whether the suit is bad for non-joinder of necessary parties? OPD

6. Whether the defendants are entitled to special costs under Section 35-A CPC? OPD

7. Relief."

The parties to the suit neither objected to the framing of the issues nor prayed for framing of any additional issue in the present case. While deciding the suit and the appeal, both the Courts below held that the sale deed Ex.P.1 sought to be projected by the appellants/ plaintiffs to claim the ownership of the land in dispute, did not convey any title in their favour. This finding was recorded in spite of the fact that there was no issue regarding the validity of the sale deed before the Courts below, which could enable both the parties to lead their complete evidence on the issue.

Learned counsel for the respondents also could not dispute the proposition of law that any findings recorded by the Courts below which are beyond the issues framed in the suit are nonest as the parties had not gone

on trial on that issue and had no opportunity to lead their complete evidence thereon.

Once it is found that certain observations have been made on a fact by the Courts below which was not an issue under consideration in the suit, the findings recorded thereon deserve to be expunged from the impugned judgments and decrees passed by both the Courts below. Accordingly, the findings regarding the validity of the sale deed as recorded by the Courts below are expunged from the impugned judgments and decrees and the final result of the Courts below is, however, sustained as the findings of fact recorded regarding the possession of the property could not be faulted with.

The appeal is disposed of in the manner indicated above.

October 30, 2007 **(RAJESH BINDAL)**
renu **JUDGE**